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## Novelties in Capital Loss and Negative Equity Regulations

The Communiqué amending the procedures and principles regarding the implementation of Article 376 of the Turkish Commercial Code (“TCC”) has been published in the Official Gazette (No. 31346) on December 26, 2020. The new amendment has entered into force on the same date.

The amendment emphasizes the consideration of “loss” in the determination of the uncovered sum of share capital and legal reserves. The amendment also clarifies the wording of the previous Communiqué regarding the concepts of at least “half” and “two-thirds” of the sum of share capital and legal reserves (“sum”). Under the new Communiqué, half of the sum is regarded as uncovered in cases where the loss is equal to half or more than half and less than two-thirds of the sum. Comparably, the wording “at least two thirds” corresponds to “more than or equal to two thirds” of the sum.

Pursuant to the amendment, if two-thirds of the sum are uncovered, the capital can be reduced to the minimum amounts on condition that at least half of the sum is preserved within equity. It also introduces limitations on the use of loss compensation funds, specifying that the funds can only be used to offset losses.

Without prejudice to the provisions of the capital market legislation, general assemblies of publicly-traded companies can simultaneously adopt decisions to increase the capital and reduce it by the amount of deficit resulting from losses, provided that cash capital stipulations are paid in accordance with Articles 344 and 585 of TCC. The share capital can also be simultaneously increased and decreased by desired amounts if the capital stipulations are paid in full. The amendment also enables the direct increase of share capital if at least half of the sum of legal reserves and capital to be registered are preserved within equity.

Lastly, the Communiqué amends the previous Communiqué to exclude all: exchange difference expenses; and half of the sum of lease expenses, amortizations and personnel expenses of 2020 and 2021 from capital loss or negative equity calculations.

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